

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 CASE NO. CR13-0322-JCC

12 Plaintiff,

13 ORDER

14 v.

15 LEWIS DEAN ARMSTRONG,

16 Defendant.

17 This matter comes before the Court *sua sponte*. On June 23, 2015, defendant Lewis Dean
18 Armstrong was sentenced pursuant to his conviction following a jury trial for violation of 18
19 U.S.C. §§ 1153 and 2241(c), Aggravated Sexual Abuse of a Child. (Dkt. No. 116.) The Court
20 sentenced Mr. Armstrong to twenty years of incarceration, to be followed by a lifetime term of
21 supervised release. Among other supervised release conditions, the Court ordered Mr. Armstrong
22 “to participate in plethysmograph testing throughout the course of [his] supervision, as
23 determined and directed by the therapist.” (*Id.* at 5.)

24 In *United States v. Weber*, the Ninth Circuit addressed the authority of a district court to
25 order penile plethysmography as a condition of a prisoner’s supervised release. *Weber*, 451 F.3d
26 552 (9th Cir. 2006). The *Weber* court required that a trial court make particular findings on the
record if imposing plethysmography as a condition of supervised release. Pursuant to *Weber*, the
Court now finds that, given the nature of the offense, coupled with disturbing allegations of

1 similar past conduct, "the degree of intrusion caused by [plethsmographic testing] is reasonably
2 necessary" to accomplish the legitimate purposes of supervised release, and the procedure
3 "involves no greater deprivation of liberty than is necessary, given the available alternatives." *Id.*
4 at 568-69.

5 Ordinarily, as part of the presentencing colloquy, the defendant is asked whether he has
6 had an opportunity to read the presentence report. In this case, Mr. Armstrong did not respond to
7 the question. His counsel confirmed that Mr. Armstrong had been sent a copy of the presentence
8 report. The Court asked Mr. Armstrong's counsel if he proposed that we should go forward. He
9 said that he was prepared to, and I said that I don't know what more we can do. I went forward
10 with the sentencing hearing at that point. Mr. Armstrong's participation was largely limited to
11 comments about his belief that the trial transcript was inappropriately altered. Mr. Armstrong's
12 concerns about this issue were addressed in a previous order denying his request to modify the
13 transcript. (Dkt. No. 93.)

14 DATED this 25th day of June 2015.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE